IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3704 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMDAR SAHAKARI BANK LIMITED AND OTHERS
Versus
D L JANI, ASSISTANT COOPERATION OFFICER AND ANOTHER

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Appearance :
MR SHIRISH JOSHI for Applicants.
RULE SERVED for Respondent No.1.
MR PRADIP BHATE, APP for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 22/02/2006

ORAL JUDGMENT

This application is filed by eleven applicants, out of which ten applicants were directors and one was the manager of the applicant-society. By filing this application, the applicants have prayed that the

proceedings of Criminal Case No.3170/1999 which is pending before the learned Chief Judicial Magistrate, Bhavnagar may be quashed. Aforesaid complaint is filed by respondent No.1 herein, who is Assistant Cooperation Officer attached to the District Registrar, Cooperative Societies, Bhavnagar. Said complaint is filed under the provisions of Sections 147 (1) and 148 (1) of the Cooperative Societies Act read with Sections 409 and 421 of the Indian Penal Code. As per the allegations made in the complaint, substantial amount to the tune of Rs.1,85,33,112/- was invested by the management of the society in a cooperative bank and ultimately, that bank went into liquidation, which resulted into substantial loss to the applicant-society. Therefore, Cooperation Officer filed aforesaid complaint on the ground that the said amount could not have been invested in Cooperative Bank without prior permission as contemplated by Section 71 of the Cooperative Societies Act (to be referred to as "the Act" hereinafter). It is alleged that provisions of Section 71 (1) of the Act are attracted and, therefore, aforesaid complaint has been filed.

The erstwhile directors and the manager of the bank have challenged the initiation of said complaint by filing this application under Section 482 of the Criminal Procedure Code.

Mr.Joshi, learned advocate for the applicant vehemently submitted that Section 71 of the Act is not applicable in the present case as the amount, which is invested is the excess amount of the society, which is a separate fund and, therefore, Section 71 of the Act is not applicable.

In order to substantiate his say, Mr.Joshi has relied upon the order

passed by revisional authority in revision application No.116/1997, wherein the applicants have challenged the show-cause notice issued by the District Registrar against the society.

In my view, prima facie, that order has not specifically dealt with the aspect about violation of Section 71 of the Act. However, Mr.Joshi submitted that wider observations may not be made in this regard as he would like to take this point before the Magistrate whether the trial is pending. In that view of the matter, it is not necessary to deal with this point in detail. If this point is raised by the applicant, it is for the concerned to consider the same in accordance with law.

At this stage, Mr.Joshi submitted that the applicant-society can take this point in the pending trial before the concerned Court. Thereafter, Mr.Joshi submitted that even otherwise the complaint is time-barred. So far as this aspect is concerned, in my view, the same can very well be dealt with by the concerned Magistrate at the time of trial.

Considering the facts and circumstances of the case, learned Magistrate shall first decide whether the complaint is time barred and in case if it is found that complaint is not time-barred, learned Magistrate shall proceed to decide the matter on other points. It is clarified that point whether it was society's fund, which was utilized or it was a different fund altogether can also be raised by the applicant before the concerned Magistrate and the concerned Magistrate shall consider all these aspects while deciding the complaint. It is again clarified that the question of limitation is also kept open for consideration of the learned Magistrate.

Mr.Joshi submitted that the applicants may be permitted to move an application for exemption as so many directors will be required to attend the proceedings at the time of trial. It will be open to the applicants to apply for exemption and if any such application is preferred, learned Magistrate may consider the same sympathetically and if think appropriate, may grant exemption, provided the applicants assure the Court that they will remain present as and when their presence is required during trial.

Considering the aforesaid aspect of the matter, in my view, this is not a case for quashing the complaint as this Court is not expected to make rigorous inquiry to find out whether offence is committed or not by utilizing the fund of the society. All these questions, as stated earlier, are kept open for consideration of Magistrate in pending trial. In view of what is stated herein above, this petition is rejected. Rule is discharged.

(P.B.MAJMUDAR, J.)

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